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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 150210135-5182-01]

RIN 0694-XC023

Notice of Inquiry: Request for Comments Regarding Controls on Military Aircraft and Military Gas Turbine Engines on the Commerce Control List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS), Department of Commerce maintains the Export Administration Regulations, including the Commerce Control List (CCL). The Export Control Reform Initiative, a fundamental reform of the U.S. export control system, has resulted in transfer to the CCL of items that the President has determined do not warrant control on the United States Munitions List (USML), including certain military aircraft, military gas turbine engines, and related items. The USML is part of the International Traffic in Arms Regulations maintained by the Department of State. Through this notice, BIS is seeking public comments to perform a complementary review of military aircraft, military gas turbine engines, and related items on the CCL concurrent with the Department of State's review of the controls implemented in its recent revisions to Categories VIII and XIX of the USML, which control

military aircraft and military gas turbine engines, to ensure that they are clear, do not inadvertently control items in normal commercial use, account for technological developments, and properly implement the national security and foreign policy objectives of the reform effort. This notice also furthers the retrospective regulatory review directed by the President in Executive Order 13563.

DATES: Comments must be received by BIS no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted to the Federal rulemaking portal (<http://www.regulations.gov>). You can find this notice by searching on its regulations.gov docket number, which is BIS-2015-0006. Comments may also be submitted via e-mail to publiccomments@bis.doc.gov or on paper to Regulatory Policy Division, Bureau of Industry and Security, Room 2099B, U.S. Department of Commerce, Washington, DC 20230. Please refer to RIN 0694-XC023 in all comments and in the subject line of e-mail comments. All comments (including any personally identifying information) will be made available for public inspection and copying. Commerce's full plan for retrospective regulatory review can be accessed at: <http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

FOR FURTHER INFORMATION CONTACT: Todd Willis, Thomas DeFee or Jeffery Leitz in the Office of Strategic Industries and Economic Security, Munitions Control Division at 202 482 4506 or by email at Todd.Willis@bis.doc.gov, Thomas.DeFee@bis.doc.gov, or Jeffrey.Leitz@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS), Department of Commerce maintains the Export Administration Regulations, including the Commerce Control List (CCL). The Export Control Reform Initiative, a fundamental reform of the U.S. export control system, has resulted in transfer to the CCL of items that the President has determined do not warrant control on the United States Munitions List (USML), including certain military aircraft, military gas turbine engines, and related items. The USML is part of the International Traffic in Arms Regulations maintained by the Department of State. Through this notice, BIS is seeking comments to perform a complementary review of military aircraft, military gas turbine engines, and related items on the CCL concurrent with the Department of State's review of the controls implemented in its recent revisions to Categories VIII and XIX of the USML, which control military aircraft and military gas turbine engines, to ensure that they are clear, do not inadvertently control items in normal commercial use, account for technological developments, and properly implement the national security and foreign policy objectives of the reform effort.

Specifically, BIS is soliciting comments on the clarity, usability and any other matters related to implementation of the 600 series Export Control Classification Numbers (ECCNs) that control military aircraft and related items (ECCNs 9A610, 9B610, 9C610, 9D610 and 9E610) and military gas turbine engines and related items (9A619, 9B619, 9C619, 9D619 and 9E619).

The Export Control Reform Initiative: USML Review and the CCL

A core element of the Export Control Reform (ECR) Initiative has been the streamlining of categories on the USML and the control on the CCL of items that the President determines do not warrant USML control. On December 10, 2010, the Department of State provided notice to the public of its intent, pursuant to the ECR initiative, to revise the USML to create a more “positive list” that describes controlled items using, to the extent possible, objective criteria rather than broad, open-ended, subjective, or design intent-based criteria (*see* 75 FR 76935). As a practical matter, this meant revising USML categories so that, with some exceptions, the descriptions of defense articles that continued to warrant control under the USML did not use catch-all phrases, such as “specially designed” or “specifically designed or modified,” to control unspecified items. With limited exceptions, the defense articles that warranted control under the USML were those that provided the United States with a critical military or intelligence advantage. All other items were to become subject to the jurisdiction of the Export Administration Regulations. Since that time, the Departments of State and Commerce have jointly published final rules setting forth revisions for fifteen USML categories, each of which has been reorganized into a uniform and more “positive list” structure, and corresponding revisions to the CCL.

The advantage of revising the USML into a more positive list is that its controls can be tailored to satisfy the national security and foreign policy objectives of the ITAR by maintaining control over those defense articles that provide a critical military or intelligence advantage, or otherwise warrant control under the ITAR, without inadvertently controlling items in normal commercial use. This approach, however, requires that both the USML and the CCL be regularly revised and

updated to account for technological developments, practical application issues identified by exporters and reexporters, and changes in the military and commercial applications of items affected by the USML and the 600 series ECCNs.

The first rules implementing the ECR initiative became effective on October 15, 2013. They implemented revisions to Category VIII (aircraft and related items), and created Category XIX (gas turbine engines and related items) on the USML (*see* 78 FR 22740) as well as the 600 series ECCNs 9A610, 9B610, 9C610, 9D610 and 9E610 (aircraft and related items) and 9A619, 9B619, 9C619, 9D619 and 9E619 (gas turbine engines and related items) on the CCL (*see* 78 FR 22660). The Department of State is seeking comment from the public on the condition and efficacy of the revised Categories VIII and XIX and whether they are meeting the ECR objectives for the list revisions. BIS will make any changes to the CCL that it determines are necessary to complement USML revisions. However, with this notice, BIS is also independently seeking comment on how to improve the implementation of 600 series ECCNs 9A610, 9B610, 9C610, 9D610, 9E610, 9A619, 9B619, 9C619, 9D619 and 9E619.

Executive Order 13563

On January 18, 2011, President Barack Obama issued Executive Order 13563, affirming general principles of regulation and directing government agencies to improve regulation and regulatory review. Among other things, the President stressed the need for the regulatory system to allow for public participation and an open exchange of ideas, as well as promote predictability and reduce uncertainty. The President also emphasized that regulations must be accessible, consistent, written in plain language, and easy to understand. As part of its ongoing effort to

ensure that its regulations are clear, effective, and up-to-date, BIS is issuing this notice soliciting public comments.

Dated: February 24, 2015

Kevin J. Wolf

Assistant Secretary for Export Administration

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